

## Coast Guard, DHS

## § 116.01

(b) The term “small motorboats” shall be interpreted in the light of the things and conditions with which it is associated. The term means rowboats, canoes and other similar craft with outboard motors. It does not include sailing or cabin cruiser craft.

(14 U.S.C. 633; 33 U.S.C. 401, 491, and 525; 49 U.S.C. 1655(g); and 49 CFR 1.46(c))

[CGFR 67-46, 32 FR 17771, Dec. 12, 1967, as amended by CGD 81-076, 46 FR 54936, Nov. 5, 1981; USCG-1998-3799, 63 FR 35527, June 30, 1998]

### PART 116—ALTERATION OF UNREASONABLY OBSTRUCTIVE BRIDGES

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AUTHORITY: 33 U.S.C. 401, 521.

EDITORIAL NOTE: Nomenclature changes to part 116 appear at 73 FR 35012, June 19, 2008 and 75 FR 49410, Aug. 13, 2010.

SOURCE: CGD 91-063, 60 FR 20902, Apr. 28, 1995, unless otherwise noted.

#### § 116.01 General.

(a) All bridges are obstructions to navigation and are tolerated only as long as they serve the needs of land transportation while allowing for the reasonable needs of navigation.

(b) This part describes the general procedures by which the U.S. Coast Guard determines a bridge to be an unreasonable obstruction to navigation and issues an Order to Alter under the authority of the following statutes, as appropriate: Section 18 of the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. 502; Section 4 of the Bridge Act of 1906, 33 U.S.C. 494; or the Tru-

man-Hobbs Act of 1940, as amended, 33 U.S.C. 511-524.

(c) A bridge constructed across a navigable water of the United States shall not unreasonably obstruct the free navigation of the water over which it was constructed, either due to insufficient height or width of the navigation span, or because of difficulty in passing through the draw opening. If any bridge unreasonably obstructs navigation, the Commandant, U.S. Coast Guard, will order the alteration of that bridge. Alterations may include structural changes, replacement, or removal of the bridge.

(d) Whenever the Coast Guard has good reason to believe that a bridge across any of the navigable waters of the United States is an unreasonable obstruction to navigation, the Coast Guard will give notice to the owner of the bridge and other interested parties, and hold a public meeting at which the interested parties will have a full opportunity to be heard and to provide information on the question of whether alterations to the bridge are necessary and, if so, the extent of alterations needed.

(e) If the Coast Guard determines that alterations to a bridge are necessary, the Commandant, U.S. Coast Guard, will issue to the bridge owner an Order to Alter containing details of the alterations necessary to render navigation through or under the bridge reasonably free, easy, and unobstructed.

(1) In the case of a railroad or publicly owned highway bridge, an Order to Alter is issued to the bridge owner under the provisions of the Truman-Hobbs Act (33 U.S.C. 511 *et seq.*). In ordering these alterations, the Coast Guard will give due regard to the necessities of free and unobstructed navigation and of rail and highway traffic. For alterations to bridges governed by the Truman-Hobbs Act, the Coast Guard must approve general plans, specifications, and contracts for the alteration project, as well as approving the apportionment of the total cost of the alterations between the United States and the bridge owner.

(2) For all other bridges, the Order to Alter will contain the required alterations for the bridge and will prescribe

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a reasonable time in which to accomplish the required alterations. The bridge owner is responsible for the entire cost of the required alterations.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by USCG-2010-0351, 75 FR 49410, Aug. 13, 2010]

### **§ 116.05 Complaints.**

Any person, company, or other entity may submit to the District Commander of the Coast Guard district in which a bridge over a navigable water of the United States is located, a complaint that a bridge unreasonably obstructs navigation. The complaint must be in writing and include specific details to support the allegation.

### **§ 116.10 Preliminary review.**

(a) Upon receipt of a written complaint, the District Commander will review the complaint to determine if, in the District Commander's opinion, the complaint is justified and whether a Preliminary Investigation is warranted.

(1) The District Commander's opinion as to whether or not the complaint warrants a Preliminary Investigation will be formed through informal discussions with the complainant, users of the affected waterway, the owner of the bridge, and other interested parties.

(2) In forming an opinion, the District Commander may also review the district files, records of accidents, and details of any additional written complaints associated with the bridge in question.

(b) In the absence of any written complaint, the District Commander may decide, based on a bridge's accident history or other criteria, to conduct a Preliminary Investigation.

(c) The District Commander will inform the complainant and the Administrator, Office of Bridge Programs of the determination of any Preliminary Review. If the District Commander decides that the bridge in question is not an unreasonable obstruction to navigation, the complainant will be provided with a brief summary of the information on which the District Commander based the decision and will be informed of the appeal process described in § 116.55. There will be no further inves-

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tigation, unless additional information warrants a continuance or reopening of the case.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33663, June 28, 1996]

### **§ 116.15 Preliminary investigation.**

(a) During the Preliminary Investigation, the District Commander will prepare a written report containing all pertinent information and submit the report, together with a recommendation for or against the necessity of a Detailed Investigation, to the Administrator, Office of Bridge Programs.

(b) The Preliminary Investigation Report will include a description of the nature and extent of the obstruction, the alterations to the bridge believed necessary to meet the reasonable needs of existing and future navigation, the type and volume of waterway traffic, and a calculation of the benefits to navigation which would result from the proposed bridge alterations.

(c) The Administrator, Office of Bridge Programs will review the Preliminary Investigation Report and make a Preliminary Decision whether or not to undertake a Detailed Investigation and a Public Meeting.

(d) If after reviewing the Preliminary Investigation Report, the Administrator, Office of Bridge Programs decides that further investigation is not warranted, the complainant will be notified of the decision. This notification will include a brief summary of information on which the decision was based and details of the appeal process described in § 116.55.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33663, June 28, 1996; USCG-2012-0306, 77 FR 37314, June 21, 2012]

### **§ 116.20 Detailed investigation.**

(a) When the Administrator, Office of Bridge Programs determines that a Detailed Investigation should be conducted, the District Commander will initiate an investigation that addresses all of the pertinent data regarding the bridge, including information obtained at a public meeting held under § 116.25.